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Mayor

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DATE: February 10, 2011

TO: Alderman Marcia T. Johnson, Chairman  
and Members of the Zoning and Planning Committee

FROM: Candace Havens, Director of Planning and Development   
Jennifer Molinsky, Interim Chief Planner – Long Range Planning  
Brian Lever, Senior Preservation Planner

SUBJECT: Petition # 235-10 Ald. Baker and Yates on behalf of the Newton Historical Commission requesting updates to **Section 22-50** Demolition of historically significant buildings or structures., to minimize inconveniences to homeowners proposing modest changes and to enhance protections for historic structures proposed for demolition, with specific amendments designed to (1) reduce the number of applications filed and allow smaller projects to occur without review; (2) establish a minimum period of delay for full demolition if the structure is found to be preferably preserved; and (3) extend the existing period of delay, as has occurred in other communities, for structures proposed for full demolition if the structure is found to be preferably preserved.

CC: Mayor Setti D. Warren  
Board of Alderman  
John Lojek, Commissioner, Inspectional Services Department  
Marie Lawlor, Assistant City Solicitor  
Donald Lang, Chair, Newton Historical Commission

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The purpose of this memorandum is to provide supplemental information for use of the Zoning and Planning Committee in its deliberations on petition #235-10 regarding the Demolition Delay Ordinance. A change to Sec. 22-50, the Demolition Delay Ordinance, requires a vote by the Board of Aldermen.

This petition originally recommended three changes to the Demolition Delay Ordinance, regarding the threshold for review, application for waiver of a one-year demolition delay, and the length of the delay. At its meeting on January 24<sup>th</sup>, the Committee voted to move the first change, regarding threshold for review, to the Board of Aldermen; the Board adopted that change on February 7<sup>th</sup>. This memo describes the remaining two provisions in the petition.

## **BACKGROUND**

The Demolition Delay Ordinance was enacted in 1985. It enables the Newton Historical Commission (NHC) to delay the demolition of historically significant buildings and structures, the loss of which is considered to be detrimental to the historic resources and heritage of the City. Initially the delay was six-months; it was later extended to one-year. In order for the one-year delay to be imposed, a building or structure has to be found both historically significant (requiring review of the Historical Commission) and preferably preserved (meaning its loss will be detrimental). The goal of the one-year delay is to encourage property owners to consider alternatives to demolition. During the one-year delay, property owners may apply to waive the remainder of the delay based upon mitigating circumstances.

In 2003, the Commission adopted an internal review policy regarding partial demolition, defining it as demolishing or altering greater than 25% of a façade or roof. This policy change was formally adopted as part of the ordinance change in 2008, which also granted a staff level review. The Planning Department and the Historical Commission have since engaged in a review of the effectiveness of the Demolition Delay and have noted the following issues:

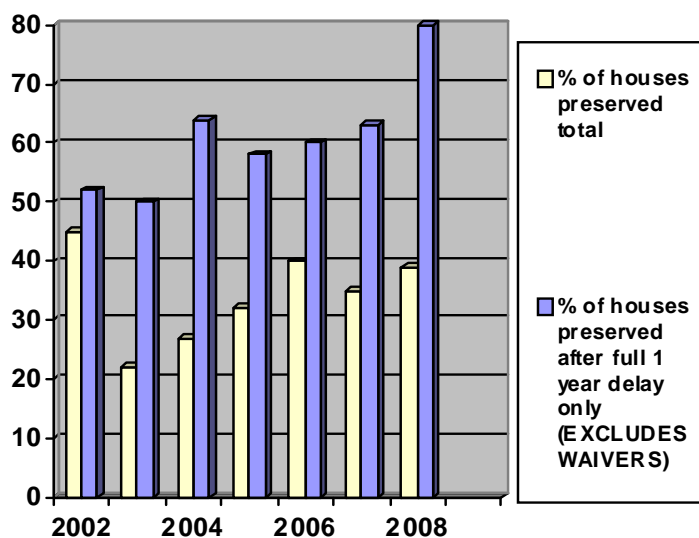
1. The number of filings for demolition review is higher in Newton than any other community in Massachusetts. In fact, Newton annually receives two to three times as many applications as the City of Boston due to the strict filing procedures narrowly defining demolition.
2. The Historical Commission has been inundated with requests for waivers of the Demolition Delay even before a building is put on the one-year delay and in other cases, applicants apply for a waiver from the delay at the same time a building is put on delay and may return repeatedly until a waiver is obtained. This decreases the effectiveness of the Ordinance in preserving historic buildings and structures in Newton.
3. In comparison to other communities such as Cambridge, Newton's delay saves far fewer buildings from destruction.
4. Preservation staff in Newton spend far more time on demolition review than any other job responsibility (and more than other staff in other communities), which limits time for other important job functions such as grant writing and public outreach.

To address these concerns, the following actions are recommended:

**(1) Reduce the number of applications filed and allow smaller projects to occur without review by raising the threshold for review from demolition of at least 25% of a façade or roof to 50% of a façade or roof.** This portion of the petition was adopted by the Board of Aldermen at its meeting on February 7<sup>th</sup>.

**(2) Establish a minimum period of delay for full demolition if the structure is found to be preferably preserved.**

If a structure is found to be preferably preserved and, therefore, a one-year Demolition Delay is instituted, property owners may still apply for a waiver of that delay. The Historical Commission may approve an application for a waiver of the delay based on mitigating circumstances. For example, if the property owner puts forth an alternative plan that preserves the building, documentation of the historic building prior to demolition, or a design for a replacement building. Additionally, if the building is condemned by Inspectional Services, the delay is nullified and the building can be demolished without Historical Commission approval. A property owner can apply for a waiver the same night as a Demolition Delay is imposed. For many years, in order to move through the dozens of applications the Historical Commission would review in an evening, the Commission issued numerous waivers of the Demolition Delay. Meanwhile, the Commission was also less able to focus on substantial projects that affected significant buildings. Thus, the Historical Commission issued waivers of the Demolition Delay for most applications for total demolition of a historic building in order to come to a speedy resolution on the many projects before it, and many historic buildings were demolished at a rate greater than had ever been done before.



Staff in Cambridge estimate that **over 50%** of demolition applications annually filed result in the building being saved, a significant advantage over Newton.

The issuance of waivers has had a significant effect on the success rate of the Demolition Delay. Before the 2003 change, in which the Commission began to see greater numbers of applications because the threshold was formalized as 25% of a facade or roof, between 40% and 50% of applications for full demolition resulted in buildings being saved. The success rate has never been that high since. Of the buildings found preferably preserved in 2003, only 22% of buildings were saved. In contrast, the number of buildings that were saved as a result of undergoing the entire one-year delay has been in excess of 50% each year. **This means that a building is far more likley to be preserved if it undergoes the full delay.** The more waivers are issued, the fewer buildings are preserved. Newton preservation staff has spoken with preservation staff and Commission members in Cambridge, Brookline and Needham and in those communities waivers of the Demolition Delay are not issued as quickly or as easily as they are in Newton, usually not less than four to six months into the delay. Staff in Cambridge estimate that over 50% of demolition applications annually filed result in the building being saved, a significant advantage over Newton.

Following the example of Brookline, Cambridge, Needham and other communities, the Historical Commission is proposing to establish a **minimum period of delay of four months for applications involving the total demolition of buildings only.** Under this policy, if a Demolition Delay is imposed, a property owner would have to wait four months before applying to waive the delay. During this period applicants can pursue alternatives to demolition including: renovating the building; adding onto the building; selling the building to someone willing to preserve it; or moving the building. If the building cannot be reused, a property owner can at any time during the delay ask Inspectional Services to condemn the building or structure, at which point the demolition delay is nullified for safety concerns. At the end of the minimum period, should an applicant still wish to continue with demolition, the Commission would consider applications for a waiver of the demolition delay based upon mitigating circumstances. It is important to note that a property owner who had planned a full demolition and been issued a Demolition Delay can change plans and apply for a partial demolition at any meeting; the four month delay would not apply in this instance.

The purpose of this proposed amendment is to ensure that there is at least a four-month waiting period before the Demolition Delay can be waived. With no minimum wait period before the issuance of a waiver, the effect of the Demolition Delay is nullified because neither the applicant nor the Commission has time to work on an alternative to demolition. Some communities do not issue waivers at all, forcing all applicants to wait the full amount of the delay. In April 2010, the Historical Commission instituted a new policy that it would not hear requests for waivers of the delay for replacement buildings until two months after finding a building preferably preserved. This policy has been a trial effort and has not created problems with applicants, but also has not substantially reduced demolition through waiver requests. The current proposal would increase the minimum wait period by two months, which is more likely to provide an incentive toward preservation and represents 1/3 of the current one-year delay.

Proposed language, which has been revised to reflect the Committee's suggestions at the last meeting, is attached.

**(3) Extend the existing period of delay, as has occurred in other communities, for structures proposed for full demolition if the structure is found to be preferably preserved.**

Currently, five communities in Massachusetts, Acton, Amesbury, Brookline, Chatham, and Middleborough, have 18-month delays. In Brookline and Acton, the extra six months beyond the one-year delay is only for National Register listed or other specially designated historic properties. Extending the delay offers greater protection for historic properties by giving more time in which property owners are encouraged to work out alternatives to full demolition. Properties are found preferably preserved at a public meeting by a majority vote of the Historical Commission due to their significance. The "preferably preserved" determination means that the loss of the building or structure will be a detrimental loss to the City's heritage.

In 2009, 13 buildings and in 2010, 12 buildings applying for total demolition were found preferably preserved. Should the Committee find that an 18-month delay is too onerous, an alternative would be to keep the one-year delay as existing and have an 18-month delay for National Register listed properties and properties determined to be eligible for listing either individually or as part of a National Register district. This would currently apply to roughly 1,000 properties, as there are

roughly 1,600 National Register listed properties in Newton with approximately 600 located in local historic districts that are reviewed under a different ordinance.

## **PROPOSAL**

To address these issues the Historical Commission has proposed the following changes to the Demolition Delay Ordinance:

- 1) Insitute a minimum period for full demolition applications found preferably preserved of four months. This period is intended to promote the reuse of buildings. After four months an applicant can then apply for a waiver of the delay for a replacement building. Partial demolition applications will not be affected and can be issued waivers at the first meeting.
- 2) Increase the total length of the Demolition Delay to 18 months. As discussed, the longer an applicant undergoes the delay, the more likely the building is to be preserved.

## **PLANNING DEPARTMENT ANALYSIS**

The Planning Department has reviewed this matter with the Historical Commission and recommends adoption as proposed. The Planning Department believes the changes provide a greater incentive for the preservation of Newton's historic properties.

### **Attachments**

*Attachment A:* Memo from Newton Historical Commission

*Attachment B:* Demolition Delay Ordinance marked up with proposed changes

## PROPOSED CHANGES TO DEMOLITION DELAY ORDINANCE

The Newton Historical Commission voted unanimously at its January 28, 2010 hearing to propose the changes set forth in the attached copy of the Demolition Delay Ordinance. We are confident that these changes will have the dual benefit of reducing the number of historically significant buildings and structures demolished annually, while simultaneously making it less complicated for city residents doing remodeling projects.

The intent and purpose of the Demolition Delay Ordinance is “*the preservation and enhancement of the City of Newton's historical and cultural heritage by preserving, rehabilitating or restoring whenever possible, buildings or structures which have distinctive architectural features or historical associations that contribute to the historic fabric of the City.*” The ordinance was adopted because historical preservation was determined to be an important and integral component of the Newton Comprehensive Plan.

Following that directive, the Commission’s single most important task is to prevent the total demolition of historically significant buildings and structures to the greatest extent possible. Projects that involve an addition or a renovation are infinitely preferable simply because much of the original building or structure will remain intact. The proposed changes are consistent with the operational concept in play during the last review of the Demolition Delay Ordinance that the openings in the net be enlarged to permit the smaller fish to escape while simultaneously catching the larger fish.

The proposed changes are intended to ease the burden on city residents doing remodeling projects and will reduce the number of projects subject to the review of the Historical Commission and its staff. This will be accomplished simply by increasing the percentage of any single exterior wall surface, which includes exterior wall surfaces that would be enveloped by subsequent additions that requires review. The proposed changes are intended to reduce the number of total demolitions and expediting review of remodeling projects are as follows:

- Extend the period of the demolition delay for a total demolition from one (1) year to eighteen (18) months. The demolition delay for a remodeling project would remain unchanged at one (1) year.
- Further, projects involving total demolition that are determined to be preferably preserved would be prohibited from presenting their proposal for a replacement building or structure for four (4) months.
- Increase the filing threshold allowing more small remodeling projects to occur without review.

Please refer to the attachment for specifics.

## PROPOSED CHANGES TO THE DEMO DELAY ORDINANCE

### DIVISION 2. DEMOLITION DELAY

#### **Sec. 22-50. Demolition of historically significant buildings or structures.**

(a) *Intent and Purposes.* This section is adopted in furtherance of the policy set forth in the Newton Comprehensive Plan to assure the preservation and enhancement of the City of Newton's historical and cultural heritage by preserving, rehabilitating or restoring whenever possible, buildings or structures which have distinctive architectural features or historical associations that contribute to the historic fabric of the City.

(b) *Definitions.* For the purposes of this section, the following words and phrases have the following meanings:

*Commission:* The Newton Historical Commission, or if the regulated building or structure is in a local historic district established pursuant to G.L. c. 40C, the local historic district commission.

*Commission staff:* The person(s) regularly providing staff services for the commission whom the commission has designated commission staff for the purposes of this ordinance.

*Commissioner:* The commissioner of inspectional services.

*Application:* An application to the commissioner for a demolition permit as defined by this ordinance.

*Demolition permit:* Any permit issued by the commissioner which is required by the State Building Code and which authorizes the total or partial demolition of a building or structure (excluding interior demolition) regardless of whether such permit is called a demolition permit, alteration permit, building permit, etc.

*Total demolition:* The pulling down, razing or destruction of the entire portion of a building or structure which is above ground regardless of whether another building or structure is constructed within the original footprint of the destroyed building or structure.

*Partial demolition:* The pulling down, destruction or removal of a substantial portion of the exterior of a building or structure or the removal of architectural elements which define or contribute to the historic character of the structure.

- (1) *Items requiring review by the commission at a hearing.* Partial demolition of any architecturally significant features which would alter the massing of the existing structure including, but not limited to the following items.

- a) Additions or ~~rear~~-ells determined to be architecturally significant by commission or commission staff.

~~b) Attached garages determined to be architecturally significant by commission or commission staff.~~

c) Roofs, including flat roofs, determined to be architecturally significant by commission or commission staff.

d) Porches determined to be architecturally significant by commission or commission staff, except open decks, ~~and~~ staircases, **and entryways.** ~~which are not original to the structure and therefore which are excluded from review. excluded from review.~~

e) Removal or **envelopment by subsequent additions** ~~covering~~ of 100% ~~or more~~ of any single exterior wall surface, ~~which includes exterior wall surfaces that would be enveloped by subsequent additions.~~ Each wall is calculated by square footage individually.

f) Demolition of any architectural detail determined to be architecturally significant by commission or commission staff. ~~including but not limited to the following items.~~

~~i) Brackets~~

~~ii) Crown molding~~

~~iii) Porch columns and railings~~

~~iv) Bay windows~~

~~v) Dormers~~

~~vi) Chimneys~~

(2) *Items requiring review by the commission that may be reviewed and approved by commission staff without a hearing if plans indicate*

a) **Removal or alteration of the roof structure** ~~Construction of new dormers which encompass less than 50% of the roof surface.~~

~~b) Construction on existing flat roofs, which will not alter a significant architectural feature.~~

**eb)** Repair or replacement of existing and original **historic** porches with similar materials to match existing.

~~d) Removal of less than 50% of the roof structure.~~

**ec)** Demolition or construction of additions or alterations not visible from a public way.



~~fd)~~ Removal or **envelopment by subsequent additions** ~~covering~~ of ~~25-50~~ to ~~50~~**100**% of any single exterior wall surface, ~~which includes exterior wall surfaces that would be enveloped by subsequent additions~~. Each wall is calculated by square footage individually.

(3) *Items considered to be de minimis and requiring no commission or commission staff review:*

a) Open porches **and entryways** consisting of only a set of stairs, an entrance platform and a roof which are utilitarian in design or do not contribute to the architectural significance or character of the building.

~~b)~~ ~~Demolition or~~ **Construction** of new additions which **remove, alter, or envelop** ~~impact~~ **50**~~25~~% or less of a single exterior wall;

~~b)c)~~ **Removal or alteration of less than 50% of the roof structure**

~~ed)~~ Normal maintenance of a building's exterior, including, but not limited to repair or replacement of roof surfaces, repair or replacement of gutters, and repair or replacement of existing doors and windows, including casings and frames, repair or replacement of existing exterior cladding (clapboards, shingles, masonry, etc.).

*Historically significant building or structure:* Any building or structure which is in whole or in part fifty or more years old and which

- (1) is in any federal or state historic district, or if in any local historic district, is not open to view from a public street, public park or public body of water; or
- (2) is listed on or is within an area listed on the National Register of Historic Places or eligible for such listing, or listed on or is within an area listed on the State Register of Historic Places, or eligible for such listing; or
- (3) has been determined by the commission or its designee to be a historically significant building after a finding that it is:
  - a) importantly associated with one or more historic persons or events, or with the architectural, cultural, political, economic or social history of the City of Newton, the Commonwealth of Massachusetts or the United States of America: or
  - b) historically or architecturally important by reason of period, style, method of building construction or association with a particular architect or builder, either by itself or in the context of a group of buildings or structures; or

- c) located within one hundred fifty (150) feet of the boundary line of any federal or local historic district and contextually similar to the buildings or structures located in the adjacent federal or local historic district.

*Preferably preserved:* An historically significant building or structure which the commission has determined should be preserved, rather than totally or partially demolished, in accordance with the standards set forth in subsection (c)(5) below.

(c) *Procedure.*

- (1) No demolition permit for a building or structure which is in whole or in part fifty or more years old shall be issued by the commissioner except in conformity with the provisions of this section, as well as any other applicable law, statute, ordinance or regulation.
- (2) If any applicant and the owner of the building or structure, if different from the applicant seeks to demolish, in whole or in part, a building or structure which is in whole or in part fifty or more years old, the owner of the building or structure shall file a demolition review application with the commission for a determination as to whether the building or structure is historically significant and shall provide the commission with the following information:
  - a) a site plan or a copy of that portion of the tax assessor's map which shows the building or structure to be demolished and the property on which it is located;
  - b) photographs of all existing façade elevations of the building or structure to be totally or partially demolished;
  - c) a description of the proposed plans for demolition and the reason(s) therefore.
- (3) Within fifteen (15) days after the commission's receipt of a demolition review application, the commission shall make a determination as to whether the building is or is not historically significant and shall notify, in writing, the commissioner and the applicant of this determination. The commission may delegate the determination that a building or structure is historically significant to commission staff or to a designated commission member. In the event that the commission delegates the determination to the commission staff or to a designated commission member, the commission shall adopt criteria to be followed by the staff or the member in making this determination.

A determination that a building or structure is or is not historically significant made by the commission staff or a designated commission member may be appealed to the full commission by filing a notice of appeal with the commission not later than fifteen (15) days after the written notice that the building or structure is or is not historically significant has been filed with the commissioner. Filing the appeal of the determination shall not stay the effect of such determination. Following a hearing before the commission, which may, but is

not required to be conducted in conjunction with the hearing on whether the building or structure is preferably preserved, the commission shall affirm or reverse the determination and file notice of such determination with the commissioner. If the appeal of the determination is made independent of the preferably preserved hearing, the commission shall follow the same procedure for such hearing as that set forth in subsection (c)(5) below. If the commission fails to conduct a hearing on the appeal of said determination or fails to rule on the appeal within forty-five (45) days from the filing of the appeal, the determination that a building or structure is or is not historically significant shall remain unchanged, and the commissioner shall not issue a demolition permit until the procedural requirements of subsection (c)(5) below have been satisfied.

- (4) No demolition permit shall be issued by the commissioner for a building or structure determined to be historically significant until the procedural requirements of subsection (c)(5) of this ordinance have been satisfied. The commissioner may grant the demolition permit if the commissioner:
- a) does not receive written notice within forty-five (45) days after the commission's receipt of a demolition permit application that the building or structure is historically significant; or
  - b) receives written notice from the commission that the building either is not historically significant, or is historically significant, but clearly would not be deemed preferably preserved by the commission.
- (5) When a building or structure is determined to be historically significant, the commission shall hold a public hearing to determine whether the building or structure, or the portion of the building or structure to be demolished, is preferably preserved. The applicant shall provide the commission with the following information for this determination:
- a) in the case of partial demolition involving alteration(s) or addition(s) to a building or structure, (i) proposed plans and elevation drawings for the affected portion of the building or structure; and (ii) a plot plan of the property, if the same is required to obtain a permit under the State Building Code for the proposed alteration(s) or addition(s); and
  - b) if the site of the building or structure to be demolished is to be redeveloped, plans showing the use or development of the site after demolition together with a statement identifying all zoning variances and/or special permits which may be required in order to implement the proposed use or development.

The date the commission receives all the above information shall be stamped on the information received and shall be considered the submission date. Following public notice as set forth in subsection (c)(8) of this ordinance, the commission shall hold a public hearing within forty-five (45) days of the submission date to determine whether the building or structure should be preferably preserved, based on the criteria set forth in this paragraph. If the commission finds that the demolition proposed in the application would result in the demolition of a historically significant building or structure whose

loss would be detrimental to the historical or architectural heritage or resources of the City of Newton, then the commission shall find that the building or structure should be preferably preserved.

- (6) Upon a determination that the building or structure which is the subject of an application for a demolition permit is preferably preserved, the commission shall give written notice of the determination to the commissioner. A copy of the commission's determination shall also be sent to the applicant for the demolition permit and to the owner of the building or structure if different from the applicant.

a) No demolition permit shall be issued **for a Total Demolition of a building or structure** until **eighteen (18) months** ~~one (1) year~~ after the date of such determination by the commission, unless the commission informs the commissioner prior to the expiration of such ~~one (1) year~~ **eighteen (18) month** period that the commission is satisfied that the applicant for the demolition permit and the owner of the building or structure, if different from the applicant, has:

~~ia~~) made a bona fide, reasonable and unsuccessful effort to locate a purchaser for the building or structure who is willing to preserve, rehabilitate or restore the building or structure; or,

~~ii b~~) has agreed to accept a demolition permit on specified conditions approved by the commission.

iii) **If the specified conditions involve approved plans and elevations, then no demolition permit shall be issued by the commissioner unless the applicant provides, as part of his application for a demolition permit, a complete set of plans and elevation drawings which have been signed and stamped by the commission or commission staff. The applicant shall have two (2) years from the date of the expiration of the eighteen (18) month period in which to apply for and obtain a demolition permit. No demolition permit shall be issued for such building or structure after the expiration of this two (2) year period, unless the procedural requirements of subsection (c)(5) hereof have been satisfied.**

~~iii~~iv) **In order to encourage applications that preserve, restore, reuse, or rehabilitate historic buildings and structures, no application for a total demolition of a building or structure which has been unfavorably and finally acted upon by the commission shall be acted favorably upon within four months after the date of final unfavorable action unless the said commission finds**  
**(a) by a vote of two-thirds (2/3) of those members present, substantial and material changes in said resubmitted application, or**  
**(b) by a majority vote of those members present, that the resubmitted application proposes to preserve the building or structure.**

~~iv)~~v) Due notice shall be given to parties in interest of the time and place of the proceedings when the resubmitted application will be considered.

b) No demolition permit shall be issued for a Partial Demolition of a building or structure found preferably preserved until one (1) year after the date of such determination by the commission, unless the commission informs the commissioner prior to the expiration of such one (1) year period that the commission is satisfied that the applicant for the demolition permit and the owner of the building or structure, if different from the applicant, has:

i) agreed to accept a demolition permit on specified conditions approved by the commission.

ii) If the specified conditions involve approved plans and elevations, then no demolition permit shall be issued by the commissioner unless the applicant provides, as part of his application for a demolition permit, a complete set of plans and elevation drawings which have been signed and stamped by the commission or commission staff. The applicant shall have two (2) years from the date of the expiration of the one (1) year period in which to apply for and obtain a demolition permit. No demolition permit shall be issued for such building or structure after the expiration of this two (2) year period, unless the procedural requirements of subsection (c)(5) hereof have been satisfied.

(7) Upon a determination by the commission that a building or structure is not preferably preserved or upon the commission's failure to make any determination within forty-five (45) days of the submission date, the commissioner may grant a demolition permit for the building or structure.

(8) Public notice of commission hearings shall provide the date, place and time of the hearing and the addresses of the properties to be considered at the hearing. Public notice shall include, at a minimum, posting with the city clerk and notification to the director of planning and development, to the applicant, to the owners of all abutting property and to other property owners deemed by the commission to be materially affected.

(9) If the applicant is someone other than the owner or his designated agent a demolition review application cannot be filed until the commission receives written authorization from the owner that the applicant may apply for changes to their property.

(d) *Emergency Demolition.* If a building or structure poses an immediate threat to public health or safety due to its deteriorated condition, the owner of such building or structure may request issuance of an emergency demolition permit from the commissioner. As soon as practicable after the receipt of such request, the commissioner shall arrange to have the property inspected by a board consisting of himself or his designee; the city engineer or his designee; the fire chief or his designee; the chairman of the commission or his designee; and one (1) disinterested person chosen by the commissioner. After inspection of the building or structure and consultation with the other members

of the board, the commissioner shall determine whether the condition of the building or structure represents a serious and imminent threat to public health and safety and whether there is any reasonable alternative to the immediate demolition of the building or structure which would protect public health and safety. If the commissioner finds that the condition of the building or structure poses a serious and imminent threat to public health and safety and that there is no reasonable alternative to the immediate demolition of the building or structure, then the commissioner may issue an emergency demolition permit to the owner of the building or structure. Whenever the commissioner issues an emergency demolition permit under the provisions of this section of the ordinance, he shall prepare a written report describing the demolition of the building or structure and the basis of his decision to issue an emergency permit with the commission. Nothing in this section shall be inconsistent with the procedures for the demolition and/or securing of buildings and structures established by M.G.L. c. 143, sections 6-10.

In the event that a board of survey is convened under the provisions of M.G.L. c. 143, section 8 with regard to any historically significant building or structure, the commissioner shall request the chairman of the commission or his designee to accompany the board during its inspection. A copy of the written report prepared as a result of such inspection shall be filed with the commission.

- (e) *Non-Compliance.* Anyone who demolishes a historically significant building or structure without first obtaining and complying fully with the provisions of a demolition permit issued in accordance with this section shall be subject to a fine of not more than three hundred dollars (\$300.00) for each day of violation of this ordinance.

In addition, unless a demolition permit issued in accordance with this section was obtained and unless such permit was fully complied with, including full compliance with plans and elevation drawings signed and stamped by the commission, the commissioner may elect to (1) issue a stop work order halting all work on the building or structure until the commission notifies the commissioner in writing that the applicant has appeared before the commission to address such non compliance, and the commission has accepted the applicant's plans to remediate such noncompliance; (2) refuse to issue any certificates of occupancy, temporary or final, until any noncompliance has been remediated; and/or (3) refuse to issue a permit required by the State Building Code pertaining to any property on which an historically significant building or structure has been demolished for a period of two (2) years from the date of demolition, provided that this provision shall not prevent the commissioner from issuing any permit required to insure the safety of persons and property."

The commission may, upon application to and determination by the commission that reuse of the property in accordance with building plans prepared by the owner and submitted to the commission and all relevant agencies will substantially benefit the neighborhood and provide compensation for the loss of the historic elements of the property either through reconstruction of the lost historic elements or significant enhancement of the remaining historic elements of the site or the surrounding neighborhood, waive the fine, in whole or in part, and/or the ban on issuance of a building permit in order to allow the issuance of a building permit for construction or reconstruction of a building or structure approved by the commission. An owner receiving a waiver of the fine and/or ban on issuance of a building permit under this provision shall execute a binding agreement enforceable against all heirs, assigns and successors in interest with the

commission to insure that any reuse of the site undertaken during the two-year ban shall be implemented in accordance with the plans, terms, and conditions approved by the commission. Any reuse of the site undertaken during the two-year ban which fails to comply with the terms of the commission's approval granted under this provision shall also permit reinstitution of the fine for non-compliance with this ordinance.

- (f) *Securing Historically Significant Buildings and Structures.* If, following an application for a demolition permit, a building or structure has been determined to be historically significant, and the building or structure is subsequently destroyed by fire or other cause before any determination is made by the commission as to whether the building or structure is preferably preserved, a rebuttable presumption shall arise that the owner voluntarily demolished the building or structure without obtaining a demolition permit in accordance with the provisions of this ordinance. In such cases, the commissioner shall not issue any permit required under the State Building Code pertaining to the property on which the historically significant building or structure was located (except as necessary to secure public safety or health) for a period of two (2) years from the date of destruction of the building or structure, unless the owner can provide evidence satisfactory to the commissioner that he took reasonable steps to secure the building or structure against fire or other loss or that the cause of the destruction was not otherwise due to the owner's negligence.
- (g) *Securing Preferably Preserved Buildings and Structures.* If during the period of demolition delay for a building or structure determined to be preferably preserved, such building or structure is destroyed through fire or other cause, the commissioner shall not issue any permit required under the State Building Code pertaining to the property on which the preferably preserved building or structure was located (except as necessary to secure public safety or health) until the end of the period of demolition delay, unless the owner can provide evidence to the commission that he took reasonable steps to secure the building or structure against fire or other loss or that the cause of the destruction was not otherwise due to the owner's negligence.
- (h) *Buildings and Structures located in Local Historic Districts.* The provisions of this ordinance shall not apply to any building or structure located in a local historic district established pursuant to M.G.L. c. 40C and subject to regulation by the local historic district commission under the provisions of Sec. 22-40 of the Revised Ordinances.
- (i) *Severability.* In case any section, paragraph, or part of this section is declared invalid or unconstitutional by any court of competent jurisdiction, every other section, paragraph, or part of this ordinance shall continue in full force and effect.
- (j) *Enforcement.* The commission is authorized to institute any and all actions and proceedings, in law or in equity, in any court of competent jurisdiction, as it deems necessary and appropriate to obtain compliance with the requirements of this section.
- (k) *Applicability.*

- (1) Notwithstanding the foregoing, this section shall not apply and a demolition permit shall be issued for the reconstruction substantially similar in exterior design of a building structure

or exterior architectural feature damaged or destroyed by fire, storm, or other disaster, provided such reconstruction is begun within six (6) months thereafter and is carried forward with due diligence. This exception shall be limited to reconstruction of only that portion of the building or structure damaged by such catastrophic event.

- (2) This subsection shall not apply to buildings or structures which have been designated as landmarks pursuant to Sec. 22-60 of the revised ordinances. (Ord. No. S-230, 12-1-86; Ord. No. S-315, 6-20-88; Ord. No. T-252, 12-7-92; Ord. No. U-19, 6-20-94; Ord. No. V- 98, 12-16-96; Ord. No. V-99, 12-16-96; Ord. No. X-205, 5-1-06; Ord. No. Z-22, 04-22-08)



# PRESERVATION THROUGH BYLAWS AND ORDINANCES



## MASSACHUSETTS HISTORICAL COMMISSION

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# **Demolition Delay**

## **What is a Demolition Delay bylaw?**

A Demolition Delay bylaw is a bylaw that affords public review of demolition permit applications for potentially significant buildings, and that can invoke a delay period before the demolition of such buildings may commence. During the delay period, the building owner and the historical commission can explore opportunities to preserve or move the threatened building. While a Demolition Delay bylaw cannot prevent a demolition indefinitely, the opportunity to delay the demolition of a significant building often has a positive outcome.

## **How is it adopted?**

A Demolition Delay bylaw is typically a general bylaw requiring a majority affirmative vote of town meeting or city council. At present there is no state legislation and is, therefore, adopted pursuant to home rule authority. A Demolition Delay bylaw is most often drafted by a local historical commission following the MHC Sample Demolition Delay bylaw.

## **How does it work?**

A Demolition Delay bylaw defines the categories of buildings that are subject to review. Most communities establish a base-line age criterion, usually buildings 50 or 75 years or older. In addition to age, some Demolition Delay bylaws have categorical inclusions such as inventoried properties, properties on the State Register of Historic Places, or properties listed in or eligible for listing in the National Register of Historic Places. In a few cases, communities have generated a specific list of buildings to which the Demolition Delay bylaw applies. In order to ensure comprehensive protection, most municipalities in Massachusetts should establish an age based demolition delay bylaw.

A property owner requesting a demolition permit from the building department for a building that is subject to review must first seek approval from the historical commission. If the historical commission determines at a public hearing that a significant building is preferably preserved, a delay period is imposed. During the delay period, the local historical commission, the property owner, the general public and concerned individuals explore opportunities to preserve the building. However, if the delay period expires and a successful preservation outcome was not achieved, the building inspector can issue the demolition permit at that time. A Demolition Delay bylaw cannot indefinitely prevent a demolition from occurring. Communities that are seeking to permanently prevent demolitions should pursue a Local Historic District or Architectural Preservation District bylaw.

The bylaw specifies the length of the delay. Most bylaws have a delay period of 6, 12 or 18 months. Longer delay periods provide better results in preserving threatened buildings, and the MHC recommends a minimum delay period of 12 months. Depending on the wording of the bylaw, review can include partial demolitions. Examples of partial demolitions include the removal of one side of the building, removal of the roof or removal of 25% of the building.

## **For more information**

For more information, contact the Massachusetts Historical Commission for a copy of its sample Demolition Delay bylaw.

## Examples of Demolition Delay Bylaws in Massachusetts

### Brookline

Brookline recently amended its demolition delay bylaw to extend the delay from twelve months to eighteen months. In a recent case, a building under demolition delay was proposed for inclusion in a local historic district during the delay period. The building is now protected as part of a local historic district. Preservation of the 1906 Coolidge Corner Theatre, an icon of the Harvard Street landscape, was a result of the demolition delay bylaw. One of the few Lustron houses in Massachusetts also was preserved, which conveys the rising interest in and significance of these early pre-fabricated, post World War II houses. The porcelain-enamel Lustron House was constructed in 1949 and was part of a trend to build affordable and functional housing in response to increased housing needs. Brookline has also been very successful in using their demolition delay bylaw to negotiate and mitigate the demolition of a building.



### Andover

There have been many success stories in Andover. The extension of the delay from six months to twelve months has had a substantial positive effect by providing more time to find alternatives to demolition of historically significant resources. In the case of the Holt-Cogswell House, a Georgian dwelling built in ca. 1740, the demolition delay bylaw deterred a developer who had planned to demolish the house, from purchasing it. A preservation-minded developer then stepped forward to purchase and restore the substantially deteriorated house.



### Arlington

The ca. 1840 Wyman-Pichette House was slated for demolition for new development on the large lot on which it was located. The Arlington Historical Commission deemed it 'preferably preserved' and delayed the demolition for one year. The Arlington Historical Commission then worked with the owners to find someone who would move the house. The house was first moved to a parking lot while details were worked out. After a new owner and a location were found, the Greek Revival dwelling was moved into the Pleasant Street Historic District where it fits within the period of development of the district.





## Boston

The Fowler-Clark House built between 1786 and 1806 in the Mattapan neighborhood of Boston was found to be preferably preserved by the Boston Landmarks Commission as one of only a few remaining examples of early agricultural properties in Boston. During the delay period, the Federal style farmhouse was studied and eventually designated a Local Landmark under Boston's special preservation legislation. This designation protects the farmhouse from demolition and provides a review and approval process for future changes to the property. Another success is the Boiler Room at the rear of a



main building constructed by the Boston Wharf Company in the Fort Point Channel neighborhood in 1901. Plans to demolish the large 1,900 square foot single-story brick building were reviewed by the Boston Landmarks Commission and the demolition delay was invoked. The hearing was well attended by Fort Point Channel neighbors who adamantly opposed demolition of the Boiler Room. A month after demolition was delayed, the owner notified the Landmarks Commission that the demolition request would be withdrawn as the owner had been convinced through the hearing process of the building's historical significance and value to the neighborhood. Instead the owner plans to renovate the Boiler Room.



## Brookline

Brookline amended its demolition delay bylaw to extend the delay from twelve to eighteen months for any individual or contributing National Register listed or eligible property. In one example, a local historic district was established during the delay period to include the threatened building. The delay



period provided the extra time needed to establish a local historic district. One of only a few Lustron houses in Massachusetts also was saved from demolition. The porcelain-enamel sided house was built in 1949 as part of the postwar trend to construct affordable and functional housing. Its preservation reflects an increasing awareness of the significance of mid 20<sup>th</sup> century architecture. Brookline also

has been very successful in using the demolition delay bylaw for negotiation and mitigation.

## Cambridge

Cambridge has a one-year demolition delay ordinance. An important feature of the ordinance is that it stipulates that after a delay of one year has passed, demolition still cannot occur until all other necessary permits are in place. Two historic dwellings on an L-shaped lot were slated for demolition for the construction of three new buildings with two units each – a total of six new dwelling units. The older structure, located at the front of the lot on Watson Street, was built in 1869 in the Italianate style. The other dwelling at the rear of the lot was built in 1895 using some Stick-Style elaboration. The juxtaposition of these two dwellings on one lot illuminates Cambridge's rapid development between the mid and late 19<sup>th</sup> century. Demolition was delayed one year due to the architectural and historical significance of these two houses. During the one-year delay the Cambridge Historical Commission worked with the owner who eventually was convinced to rehabilitate the two structures and construct an addition in order to yield six units for the project. The two 19<sup>th</sup> century dwellings were preserved due to the demolition delay ordinance, and the end result was the same, six dwelling units.



## Chatham

Chatham established a six-month demolition delay bylaw in the 1990s. One of the earliest cases was to save the historic Capt. John Taylor House. In imposing the delay, the historical commission urged the owner to save the house and to enter into an agreement with the Commission giving them design review. The owner agreed and the house was preserved. In 2003 the delay period was extended to one year. A house on Bridge Street which had not been used for many years and on which there was no historic inventory form was about to be taken down so that the land could be given to the Chatham Conservation Foundation as open space. The CHC reviewed the application, conducted a site visit, and determined that the house was clearly built in the mid-19<sup>th</sup> century. The maximum 12 month delay was immediately issued. One of the neighbors then agreed to move the house to a nearby site where it has been successfully restored. To make their demolition delay even more effective, the Town amended the bylaw again in 2007 to extend the delay period to 18 months.

## Danvers

The six-month delay in Danvers was just enough time for a three-part win for the Danvers Historical



Commission and for the Tapleyville neighborhood where the project is located. The Israel Cheever House (1828) and its barn, and a second house “Overlook” (1842) came on the real estate market at the same time. A developer purchased the two properties, which totaled 6.8 acres, and planned a residential subdivision that entailed removal of one house, demolition of the barn and remodeling of the second house. Demolition and



removal were delayed and the developer worked with the Commission which advocated for preserving the properties. The result was preservation of the two Greek Revival houses in their locations, and preservation and rehabilitation of all three buildings. The project received a Preservation Award from the Danvers Historical Commission.



### **Framingham**

In downtown Framingham, the 1898 Hotel Kendall was slated for demolition to be replaced by a chain drug store. This Classical Revival hotel, which is listed in the National Register as part of the Concord Square Historic District, was determined to be “preferably preserved” and demolition was delayed. Following the Historical Commission’s decision the

developer withdrew the application to demolish. Instead the Hotel Kendall was rehabilitated with mixed uses. The street level floor has been converted to retail and the upper floors contain residential condominiums.



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### **Newton**

The City of Newton passed a demolition delay ordinance with a six-month delay in the 1980s. In the 1990s the delay was extended to one year, after which the Commission noticed a greater willingness of developers to reuse the structure rather than wait for the delay to expire. As a result, the demolition delay ordinance often has led to design that is more compatible with the existing neighborhood than was originally proposed. An example that highlights Newton’s interest in architecture of the recent past was the delayed demolition of the George Kaplan House, designed by The Architects Collaborative (TAC), and built in 1946. It is reported to have been the first International



Style TAC-designed house and one in which Walter Gropius was directly involved. The one-year delay provided sufficient time for the Newton Historical Commission to initiate a Landmark Study Report and designate this property as a Local Landmark. The owners, who had initially wanted to demolish the dwelling in order to construct a Colonial Style house, were intrigued by its significance and chose instead to design and build a sensitive addition in

keeping with the original house.

### **Orleans**

When a building is proposed for demolition, the Orleans Historical Commission uses the local media to publicize the possible loss. This exposure has helped save several buildings. One example is the former home of author Gladys Taber, which was on the market as a tear-down. The Orleans Historical Commission had an article written in a local newspaper and also notified the Gladys Taber Society. Letters came from all over the world in response to the Society’s article. The Taber Society collected

money from its membership to have an application prepared for listing the property in the National Register. The Historical Commission also held a hearing to designate the house as significant to Orleans, which was attended by the owners and their real estate agent. Upon better understanding the significance of the house, they decided to change the marketing strategy. In the end, a purchaser was found who agreed to preserve the house.



### **Peabody**

In Peabody the Historical Commission works closely with the Building Commissioner, the Planning Board and the Zoning Board of Appeals to let developers know about the Demolition Delay ordinance when planning projects. A proposal for a new strip mall would

have resulted in the demolition of three historically significant dwellings on a busy Main Street corner. The Historical Commission's pro-active approach resulted in the developer choosing not to pursue the project. This meant that the 1898 Thomas O'Shea House and the Greek Revival 1845 Edward Shillaber House were sold individually. The third property was the 1795 Joseph Osborne Jr. House for which a demolition application was made. The historical commission invoked the delay and worked diligently with the new owner who was convinced to preserve the Federal period dwelling and to design an addition that complements the house.

### **Reading**

The Town of Reading recently increased the delay period in the bylaw from six months to one year. In the mid 1990s, the historical commission preserved the Foster Emerson House by delaying the demolition and moving the house to a town-owned parcel after which it was sold back



into private ownership. A more recent example is the Joseph Parker House, constructed in the first quarter of the 18<sup>th</sup> century. The house had been occupied by generations of the same family for over 150 years since the 1850s. The last owners hoped to realize the full value of the land as two or three house lots. An application for demolition of the house was received by the town in Spring 2006. Due to the nature of the land and the needs of the owners, the Reading Historical Commission recognized that the house would not be preserved without an attempt to consider all needs – those of the owners, the concerns of the Conservation Commission due to large area of wetlands, and the Historical Commission on behalf of the town charged with preserving the community's significant resources. The Reading Historical Commission worked with both the owners and the Conservation Commission to achieve the best solution for the town. The solution was preservation of the Joseph Parker House and creation of a second building lot with waivers to Reading's Wetlands Protection Regulations. The Order of



Conditions from the Conservation Commission allowed construction of the second house on the lot as long as it was moved an additional 10' back from the wetlands buffer than was first planned; and provided that prior to commencing the new construction the owner had to apply a Preservation Restriction to the old house. Thus two preservation tools were used to permanently preserve the Joseph Parker House – the Demolition Delay bylaw and a Preservation Restriction.

